Rule 806. Attacking and Supporting the Declarant's Credibility.

When a hearsay statement—or a statement described in Rule 801(d)(2)(C), (D), or (E)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Comment to 2012 Amendment

The language of Rule 806 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Cases

806.010 When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, a party may introduce evidence to attack the credibility of the declarant.

State v. Ruggiero, 211 Ariz. 262, 120 P.3d 690, ¶¶ 14–17 (Ct. App. 2005) (defendant was charged with murder as result of shooting of 13-year-old daughter's 28-year-old boyfriend; defendant was allowed to introduce testimony from ex-girlfriend of one of defendant's friends (Soto) that Soto had said to her he killed boyfriend; trial court then allowed state to introduce for impeachment testimony from police officer that Soto had told him that defendant had killed boyfriend).

State v. Hernandez, 191 Ariz. 553, 959 P.2d 810, ¶¶ 9–15 (Ct. App. 1998) (20 minutes after killing victim, defendant called 9-1-1 and told operator that victim had attacked him with two broken bottles and so he shot victim in self-defense; trial court held this was excited utterance, and thus admissible as a hearsay exception, but then allowed state to impeach defendant with fact of his prior conviction; court rejected defendant's contention that impeachment should not be allowed to impeach excited utterances because they are inherently reliable).

806.015 Although a party may introduce evidence to attack the credibility of a hearsay declarant, if that evidence is offered both to impeach and as substantive evidence, that evidence must satisfy the requirements of the confrontation clause; if the evidence does not satisfy the requirements of the confrontation clause, that evidence may be admitted for impeachment only, and the trial court must instruct the jurors on the limited purpose for which the evidence is admitted.

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 35–36, 42 (2003) (defendant introduced statements from two inmates who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; court held accomplice confession that implicates defendant is not within firmly rooted hearsay exception to hearsay rule, and trial court made no finding that codefendant's statement to police bore sufficient indicia of reliability, thus evidence did not satisfy confrontation clause, so trial court erred in admitting codefendant's statement; court further held that, upon retrial, statement may be admitted for impeachment only, and that trial

court would have to give limiting instruction, but cautioned trial court to consider whether statement should be excluded under Rule 403).

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶ 42 n.9 (2003) (court noted that use of prior inconsistent statement as substantive evidence is predicated on fact that witness who made statement testifies at trial and thus is subject to cross-examination, but when prior inconsistent statement is admitted under Rule 806, declarant has not testified at trial and thus is not subject to cross-examination, so only way statement could be used is for impeachment and not as substantive evidence).

State v. Ruggiero, 211 Ariz. 262, 120 P.3d 690, ¶¶ 14–22 (Ct. App. 2005) (defendant was charged with murder as result of shooting of 13-year-old daughter's 28-year-old boyfriend; defendant was allowed to introduce testimony from ex-girlfriend of one of defendant's friends (Soto) that Soto had said to her he killed boyfriend; trial court then allowed state to introduce for impeachment testimony from police officer that Soto had told him that defendant had killed boyfriend; court noted second statement was not offered to prove truth of matter asserted and instead was offered only for impeachment of first statement, thus confrontation clause did not bar use of that statement).

806.020 If a statement is not admitted for the truth of the matter asserted (and thus is not hearsay), the credibility of the declarant is not relevant, so the opposing party may not introduce evidence to attack the credibility of the declarant.

State v. Dunlap, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (because statement was not offered to prove truth of matter asserted (Boles was investigating Funk family) but to show inadequacy of police investigation, it was not hearsay, and because it was not hearsay, state should not have been allowed to introduce evidence to impeach credibility of declarant).

806.040 The fact that the declarant is the defendant does not preclude impeachment of declarant/defendant.

State v. Hernandez, 191 Ariz. 553, 959 P.2d 810, ¶¶ 16–17 (Ct. App. 1998) (20 minutes after killing victim, defendant called 9-1-1 and told operator that victim had attacked him with two broken bottles, so he shot victim in self-defense; trial court held this was excited utterance, and thus admissible as hearsay exception, but then allowed state to impeach defendant with fact of his prior conviction; court rejected defendant's contention that impeachment should not be allowed because declarant was defendant, and impeachment would have been unduly prejudicial).

April 10, 2013